

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LUIS DEJESUS	:	CIVIL NO. 3:15-CV-2504
	:	
Plaintiff,	:	(Judge Kosik)
	:	
v.	:	(Magistrate Judge Carlson)
	:	
	:	
C.O. CAREY, et al.,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATION

I. Statement of Facts and of the Case

On December 29, 2015, the Plaintiff, a state prisoner acting *pro se*, filed this federal civil rights action. (Doc. 1.) Liberally construed, in this complaint DeJesus alleges that he was assaulted by a correctional officer, Defendant Carey, and retaliated against by this correctional officer in myriad ways as a result of past grievances filed by DeJesus against this correctional officer. (*Id.*) While DeJesus makes these well-pleaded allegations against Defendant Carey, his complaint has one notable omission: DeJesus never states when any of these events are alleged to have occurred.

DeJesus' complaint then goes on to name four supervisory Defendants, Superintendent Tritt, Lieutenant Popson, Dorina Varner, a corrections grievance

processing supervisor, and the Secretary of the Department of Corrections, John Wetzel. These supervisory officials are named as Defendants solely because DeJesus alleges that they “unconstitutionally manipulated” the prison grievance process when they failed to act favorably upon DeJesus’ past prison grievances. On the basis of these allegations, DeJesus sues the defendants, seeking damages totaling the mathematically precise amount of \$7,777,777.77. (Id.)

Along with this complaint, DeJesus has filed a motion seeking leave to proceed *in forma pauperis*. (Doc. 2.) For the reasons set forth below, we will grant the Plaintiff leave to proceed *in forma pauperis*, but as part of our legally-mandated screening review we recommend that the court dismiss this complaint without prejudice to DeJesus attempting to amend his complaint to state a viable cause of action.

II. Discussion

A. Screening of *Pro Se* Complaints—Standard of Review

This court has a statutory obligation to conduct a preliminary review of *pro se* complaints brought by plaintiffs given leave to proceed *in forma pauperis* in cases which seek redress against government officials. See 28 U.S.C. § 1915(e)(2)(B)(ii). Specifically, when reviewing *in forma pauperis* complaints, 28 U.S.C. § 1915(e)(2)(B)(ii) specifically enjoins us to “dismiss the complaint at any time if the

court determines that . . . the action . . . fails to state a claim upon which relief may be granted.” This statutory text mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides that a complaint should be dismissed for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).

With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) continuing with our opinion in Phillips [v. County of Allegheny], 515 F.3d 224, 230 (3d Cir. 2008)] and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S.Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court “need not credit a complaint’s bald assertions or legal conclusions when deciding a motion to dismiss.” Morse v.

Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally a court need not “assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged.” Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do.” Id. at 555. “Factual allegations must be enough to raise a right to relief above the speculative level.” Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. at 678. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

[B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual

allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 679.

Thus, following Twombly and Iqbal a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

[A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

As the court of appeals has observed: "The Supreme Court in Twombly set forth the 'plausibility' standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege 'enough facts to state a claim to relief that is plausible on its face.' Twombly, 550 U.S. at 570, 127 S.Ct. 1955. A complaint satisfies the plausibility standard when the factual

pleadings ‘allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’ Iqbal, 129 S.Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S.Ct. 1955). This standard requires showing ‘more than a sheer possibility that a defendant has acted unlawfully.’ Id. A complaint which pleads facts ‘merely consistent with’ a defendant's liability, [] ‘stops short of the line between possibility and plausibility of “entitlement of relief.” ’ ” Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011) cert. denied, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (U.S. 2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis: “First, the court must ‘tak[e] note of the elements a plaintiff must plead to state a claim.’ Iqbal, 129 S.Ct. at 1947. Second, the court should identify allegations that, ‘because they are no more than conclusions, are not entitled to the assumption of truth.’ Id. at 1950. Finally, ‘where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.’ Id.” Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010).

In addition to these pleading rules, a civil complaint must comply with the requirements of Rule 8(a) of the Federal Rule of Civil Procedure which defines what a complaint should say and provides that:

(a) A pleading that states a claim for relief must contain (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* plaintiff's complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action. Applying these legal benchmarks, we find that DeJesus' complaint fails to state a claim upon which relief may be granted for the reasons set forth below.

B. The Current Complaint Fails to Meet the Pleading Standards Prescribed by Law With Respect to Defendant Carey Because It does Not Allege When Any Events Took Place

At the outset, DeJesus' complaint against Defendant Carey is fatally flawed in one crucial respect: DeJesus completely fails to allege when the events recited in his complaint are alleged to have taken place. This is a material shortcoming since the complaint's failure to allege when events occurred constitutes a failure to comply with Rule 8's basic injunction that "A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." It is well-settled that: "[t]he Federal Rules of Civil Procedure

require that a complaint contain ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ Fed.R.Civ.P. 8(a)(2), and that each averment be ‘concise, and direct,’ Fed.R.Civ.P. 8(e)(1).” Scibelli v. Lebanon County, 219 F.App’x 221, 222 (3d Cir. 2007). Thus, when a complaint is “illegible or incomprehensible”, id., or when a complaint “is not only of an unwieldy length, but it is also largely unintelligible”, Stephanatos v. Cohen, 236 F.App’x 785, 787 (3d Cir. 2007), an order dismissing a complaint under Rule 8 is clearly appropriate. See, e.g., Mincy v. Klem, 303 F.App’x 106 (3d Cir. 2008); Rhett v. New Jersey State Superior Court, 260 F.App’x 513 (3d Cir. 2008); Stephanatos v. Cohen. supra; Scibelli v. Lebanon County, supra; Bennett-Nelson v. La. Bd. of Regents, 431 F.3d 448, 450 n. 1 (5th Cir.2005). Dismissal under Rule 8 is also proper when a complaint “left the defendants having to guess what of the many things discussed constituted [a cause of action];” Binsack v. Lackawanna County Prison, 438 F. App’x 158 (3d Cir. 2011), or when the complaint is so “rambling and unclear” as to defy response. Tillio v. Spiess, 441 F.App’x 109 (3d Cir. 2011). Similarly, dismissal is appropriate in “those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir.1995) (quotations omitted).” Tillio v. Spiess, 441 F. App’x 109, 110 (3d Cir. 2011); Tillio v. Northland Grp. Inc., 456 F. App’x 78, 79 (3d Cir.

2012). Finally, a complaint may be dismissed if it completely fails to recite when the events alleged occurred. Evancho v. Fisher, 423 F.3d 347, 354 (3d Cir. 2005).

Some basic factual recital regarding when events occurred is essential to a well-pleaded complaint because when conducting a screening review of a *pro se* complaint under 28 U.S.C. § 1915, a court may consider whether the complaint is barred under the applicable statute of limitations. As the United States Court of Appeals for the Third Circuit recently explained when it affirmed the screening dismissal of a *pro se* complaint on statute of limitations grounds:

Civil rights claims are subject to the statute of limitations for personal injury actions of the pertinent state. Thus, Pennsylvania's two year statutory period applies to [these] claims. See Lake v. Arnold, 232 F.3d 360, 368 (3d Cir.2000). The limitations period begins when the plaintiff knows or had reason to know of the injury forming the basis for the federal civil rights action. Gera v. Commonwealth of Pennsylvania, 256 Fed.Appx. 563, 564-65 (3d Cir.2007). Although we have not addressed the issue in a precedential decision, other courts have held that although the statute of limitations is an affirmative defense, district court may *sua sponte* dismiss a complaint under § 1915(e) where the defense is obvious from the complaint and no development of the factual record is required. See Fogle v. Pierson, 435 F.3d 1252, 1258 (10th Cir.2006); see also Eriline Co. S.A. v. Johnson, 440 F.3d 648, 656-57 (4th Cir.2006) (citation omitted)(finding that a district court's screening authority under § 1915(e) “differentiates *in forma pauperis* suits from ordinary civil suits and justifies an exception to the general rule that a statute of limitations defense should not be raised and considered *sua sponte*.”).

Smith v. Delaware County Court 260 F. App'x. 454, 455 (3d Cir. 2008); see also Jackson v. Fernandez, No. 08-5694, 2009 WL 233559 (D.N.J. Jan. 26, 2009); Hurst v. City of Dover, No. 04-83, 2008 WL 2421468 (D. Del. June 16, 2008). It is well-settled that claims brought pursuant to 42 U.S.C. § 1983 are subject to the state statute of limitations for personal injury actions. Wilson v. Garcia, 471 U.S. 261, 266-67 (1985). In Pennsylvania, the statute of limitations for a personal injury action is two years. 42 Pa.C.S. § 5524. A cause of action accrues for statute of limitations purposes when the plaintiff knows or has reason to know of the injury that constitutes the basis of the cause of action. Samerica Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998); see also, Nelson v. County of Allegheny, 60 F.3d 1010 (3d Cir. 1995). However, in the absence of any factual recitals describing the dates of alleged events, a complaint without any temporal context leaves: “the defendants having to guess what of the many things discussed constituted [a cause of action within the statute of limitations.]” Binsack v. Lackawanna County Prison, 438 F. App'x 158 (3d Cir. 2011).

Here, DeJesus' claims against Defendant Carey are entirely unmoored in time and place. Much more is needed in order to state a claim upon which relief may be granted. Therefore, it is recommended that the complaint be dismissed as to

Defendant Carey, without prejudice to the filing of an amended complaint which states when these events are alleged to have occurred.¹

C. DeJesus' Complaint Fails to State Any Claims of Supervisory Liability

In this case DeJesus also names 4 supervisory Defendants in his complaint, Superintendent Tritt, Lieutenant Popson, Dorina Varner, a grievance processing supervisor, and the Secretary of the Department of Corrections, John Wetzel, but has not alleged sufficient facts to give rise to supervisory liability against these officials. Instead, DeJesus merely alleges that these supervisors “unconstitutionally manipulated” the prison grievance process when they failed to act favorably upon DeJesus’ past prison grievances.

In considering claims brought against supervisory officials arising out of alleged constitutional violations, the courts recognize that prison supervisors may be exposed to liability only in certain, narrowly defined, circumstances. At the outset, it is clear that a claim of a constitutional deprivation cannot be premised merely on the fact that the named defendants were prison supervisors when the incidents set forth in the complaint occurred. Quite the contrary, to state a constitutional tort claim

¹In the first instance Rule 8 dismissals are often entered without prejudice to allowing the litigant the opportunity to amend and cure any defects. See, e.g., Rhett v. New Jersey State Superior Court, 260 F.App’x 513 (3d Cir. 2008); Stephanatos v. Cohen, supra; Scibelli v. Lebanon County, supra.

the plaintiff must show that the supervisory defendants actively deprived him of a right secured by the Constitution. Morse v. Lower Merion School Dist., 132 F.3d 902 (3d Cir. 1997); see also Maine v. Thiboutot, 448 U.S. 1 (1980). Constitutional tort liability is personal in nature and can only follow personal involvement in the alleged wrongful conduct shown through specific allegations of personal direction or of actual knowledge and acquiescence in the challenged practice. Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997).

In particular, with respect to prison supervisors it is well-established that:

“A[n individual government] defendant in a civil rights action must have personal involvement in the alleged wrongdoing; liability cannot be predicated solely on the operation of *respondeat superior*. Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.” Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988).

Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005).

As the Supreme Court has observed:

Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*. . . . See Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (finding no vicarious liability for a municipal “person” under 42 U.S.C. § 1983); see also Dunlop v. Munroe, 7 Cranch 242, 269, 3 L.Ed. 329 (1812) (a federal official's liability “will only result from his own neglect in not properly superintending the discharge” of his subordinates' duties); Robertson v. Sichel, 127 U.S. 507, 515-516, 8 S.Ct. 1286, 3 L.Ed. 203 (1888) (“A public officer or agent is not responsible for the misfeasances or position

wrongs, or for the nonfeasances, or negligences, or omissions of duty, of the subagents or servants or other persons properly employed by or under him, in the discharge of his official duties”). Because vicarious liability is inapplicable to Bivens and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.

Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009).

Applying these benchmarks, courts have frequently held that, in the absence of evidence of supervisory knowledge and approval of subordinates’ actions, a plaintiff may not maintain an action against supervisors based upon the misdeeds of their subordinates. O’Connell v. Sobina, No. 06-238, 2008 WL 144199, * 21 (W.D. Pa. Jan. 11, 2008); Neuburger v. Thompson, 305 F. Supp. 2d 521, 535 (W. D. Pa. 2004). Rather, “[p]ersonal involvement must be alleged *and is only present where the supervisor directed the actions of supervisees or actually knew of the actions and acquiesced in them*. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988).” Jetter v. Beard, 183 F. App’x 178, 181 (3d Cir. 2006)(emphasis added).

Here, in many instances DeJesus does little more than name a supervisory official in the caption of the case, and then seek to hold that official personally liable based upon the official’s supervisory status without making any specific factual allegations about these defendants in the body of this pleading. To the extent that DeJesus simply premises the liability of these Defendants upon their supervisory

status without setting forth any further factual basis for a claim in the body of this pleading, this cursory style of pleading is plainly inadequate to state a claim against a prison supervisor and compels dismissal of these defendants. Hudson v. City of McKeesport, 244 F. App'x 519 (3d Cir. 2007) (affirming dismissal of defendant who was only named in caption of case.)

Nor can DeJesus sustain a supervisory liability claim against these officials by simply alleging that these officials did not after-the-fact act favorably upon his past grievances. An inmate cannot sustain a constitutional tort claim against prison supervisors based solely upon assertions that officials failed to adequately investigate or respond to his past grievances. Inmates do not have a constitutional right to a prison grievance system. Speight v. Sims, 283 F. App'x 880 (3d Cir. 2008) (citing Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (“[T]he existence of a prison grievance procedure confers no liberty interest on a prisoner.”)). Consequently, dissatisfaction with a response to an inmate's grievances does not support a constitutional claim. See also Alexander v. Gennarini, 144 F. App'x 924 (3d Cir. 2005) (involvement in post-incident grievance process not a basis for § 1983 liability); Pryor-El v. Kelly, 892 F. Supp. 261, 275 (D. D.C. 1995) (because prison grievance procedure does not confer any substantive constitutional rights upon prison inmates, the prison officials' failure to comply with grievance procedure is not

actionable). See also Cole v. Sobina, No. 04-99J, 2007 WL 4460617, at *5 (W.D. Pa. Dec. 19, 2007) (“[M]ere concurrence in a prison administrative appeal process does not implicate a constitutional concern.”). As the United States Court of Appeals for the Third Circuit observed when disposing of a similar claim by another inmate:

Several named defendants, such as the Secretaries of the Department of Corrections or Superintendents, were named only for their supervisory roles in the prison system. The District Court properly dismissed these defendants and any additional defendants who were sued based on their failure to take corrective action when grievances or investigations were referred to them. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988) (defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of *respondeat superior*); see also Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir.1996) (state's inmate grievance procedures do not give rise to a liberty interest protected by the Due Process Clause).

Pressley v. Beard, 266 F. App'x 216, 218 (3d Cir. 2008).

Indeed, as to such claims, the United States Court of Appeals for the Third Circuit has held that summary dismissal is appropriate “because there is no apparent obligation for prison officials to investigate prison grievances. See Inmates of Attica Corr. Facility v. Rockefeller, 477 F.2d 375, 382 (2d Cir.1973).” Paluch v. Sec'y Pennsylvania Dept. Corr., 442 F. App'x 690, 695 (3d Cir. 2011).

In sum, as presently drafted, the Plaintiff's claims against these supervisory Defendants consist of little more than assertions of *respondeat superior* liability, coupled with dissatisfaction with the processing of this inmate's past grievances,

assertions which as a matter of law do not suffice to state a constitutional tort claim. Therefore, these Defendants are entitled to be dismissed from this case.

D. The Plaintiff's Demand for a Specified Sum of Damages Should be Stricken

Further, we note that the court should also strike the claim for a specific sum of \$7,777,777.77 in unliquidated damages from this *pro se* complaint. In this regard, Rule 12 (f) of the Federal Rules of Civil Procedure imposes a duty on the court to review pleadings and provides that the court may upon its own initiative at any time order stricken from any pleading any immaterial matter. Fed. R. Civ. P. 12(f). Decisions regarding whether claims may be stricken from a complaint are properly presented to a United States Magistrate Judge for determination in the first instance. Singh v. Superintending School Committee of the City of Portland, 593 F. Supp. 1315 (D. Me. 1984). In this case, the Plaintiffs' various claims for specified amounts of unliquidated damages violate Local Rule 8.1 which provides, in part, that:

The demand for judgment required in any pleading in any civil action pursuant to Fed.R.Civ.P.8(a)(3) may set forth generally that the party claiming damages is entitled to monetary relief *but shall not claim any specific sum where unliquidated damages are involved*. The short plain statement of jurisdiction, required by Fed.R.Civ.P.8(a)(1), shall set forth any amounts needed to invoke the jurisdiction of the court but no other.

Local Rule 8.1 (emphasis added).

Since this prayer for relief violates Local Rule 8.1 by specifying particular amounts of unliquidated damages, these specific dollar claims should be stricken from the complaint without prejudice to the plaintiff arguing in any subsequent trial or hearing on the merits for any appropriate amount of damages supported by the evidence.

E. The Complaint Should be Dismissed Without Prejudice

In sum, in its current form this complaint fails to state a claim upon which relief may be granted. While this screening merits analysis calls for dismissal of this action, we recommend that the Plaintiff be given another, final opportunity to further litigate this matter by endeavoring to promptly file an amended complaint. We recommend this course mindful of the fact that in civil rights cases *pro se* Plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety, see Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend is not necessary in a case such as this where amendment would be futile or result in undue delay, Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Accordingly, it is recommended that the court provide the Plaintiff with an opportunity to correct these deficiencies in the *pro se* complaint, by dismissing this deficient complaint at this time without prejudice to

one final effort by the plaintiff to comply with the rules governing civil actions in federal court.

III. Recommendation

Accordingly, for the foregoing reasons, the Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 2.), is GRANTED , but IT IS RECOMMENDED that the Plaintiff's complaint be dismissed without prejudice to the Plaintiff endeavoring to correct the defects cited in this report, provided that the Plaintiff acts within 20 days of any dismissal order.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall

witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 6th day of January 2016.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge